

**Introduced by Senator Figueroa**  
(Principal coauthor: Assembly Member Spitzer)

February 18, 2005

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An act to amend Sections 1812.80, 1812.84, 1812.85, and 1812.86 of, and to add ~~Section 1812.96~~ Sections 1812.96 and 1812.97 to, the Civil Code, relating to health studios.

LEGISLATIVE COUNSEL'S DIGEST

SB 581, as amended, Figueroa. Health studio contracts: maximum fees: cancellation rights.

(1) *Existing law prohibits a contract for health studio services from requiring payments or financing by the buyer to exceed the term of the contract, nor may the term of the contract exceed three years. Existing law provides a statement of legislative findings with regard to health studio contracts and business practices.*

*This bill would provide that the limits on the financing and terms of health studio contracts do not apply to the obligation to pay valid, outstanding moneys due under the contract. The bill would revise the statement of legislative findings described above.*

(2) Existing law provides that a consumer may cancel a contract for health studio services within 3 business days after the contract is executed or if the agreed upon services are not provided within 6 months after the date of the contract.

This bill would authorize a consumer to cancel a contract for health studio services (a) within 5 business days after the contract is executed, or within ~~30 or 60~~ 20, 30, or 45 days thereafter if the amount of the contract exceeds certain dollar amounts; (b) if the health studio fails to provide the specific facilities advertised or

offered within ~~the earlier of~~ 6 months, *except as specified*, or ~~as provided in the contract~~, if no time is indicated, the consumer may cancel the contract within six months; or (c) if the health studio eliminates or reduces the scope of the facilities, as specified. The bill would prescribe the method for calculating the consumer's refund following cancellation of the contract. *The bill would provide that a health studio entering a contract for services for \$1,000 or less is not required to comply with certain of these provisions.*

The bill would also require a seller of health studio services to hold in trust all money received from a consumer if the health studio facility has not yet opened for business, except in certain circumstances, and would prohibit the seller from drawing on, transferring or encumbering those funds, except as specified.

(2) Existing law prohibits any contract for health studio services from requiring a payment from the client in excess of \$1,000, exclusive of interest or finance charges.

This bill would increase that limit to \$3,000, including initiation or *initial* membership fees, until January 1, 2010, at which time that limit would be further increased to \$4,400, including those fees.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1812.80 of the Civil Code is amended to  
2     read:

3     1812.80. (a) The Legislature finds ~~that there exists in~~  
4     ~~connection with a substantial number of contracts for health~~  
5     ~~studio services, sales practices and business and financing~~  
6     ~~methods which have worked a fraud, deceit, imposition, and~~  
7     ~~financial hardship upon the people of this state; that existing~~  
8     ~~legal remedies are inadequate to correct these abuses; that the~~  
9     health studio industry has a significant impact upon the economy  
10    and well-being of this state and its local communities; and that  
11    the provisions of this title relating to ~~such~~ contracts *for health*  
12    *studio services* are necessary for the public welfare.

13    (b) The Legislature declares that the purpose of this title is to  
14    safeguard the public against fraud, deceit, imposition and  
15    financial hardship, and to foster and encourage competition, fair  
16    dealing, and prosperity in the field of health studio services by

1 prohibiting or restricting false or misleading advertising, onerous  
2 contract terms, harmful financial practices, and other unfair,  
3 dishonest, deceptive, destructive, unscrupulous, fraudulent, and  
4 discriminatory practices by which the public has been injured in  
5 connection with contracts for health studio services.

6 *SEC. 2. Section 1812.84 of the Civil Code is amended to*  
7 *read:*

8 1812.84. (a) A contract for health studio services may not  
9 require payments or financing by the buyer to exceed the term of  
10 the contract, nor may the term of the contract exceed three years.  
11 *This subdivision does not apply to a member's obligation to pay*  
12 *valid, outstanding moneys due under the contract, including*  
13 *moneys to be paid pursuant to a termination notice period in the*  
14 *contract in which the termination notice period does not exceed*  
15 *30 days.*

16 (b) A contract for health studio services shall include a  
17 statement printed in a size at least 14-point type that discloses the  
18 length of the term of the contract. This statement shall be placed  
19 above the space reserved for the signature of the buyer.

20 **SECTION 1.**

21 *SEC. 3. Section 1812.85 of the Civil Code is amended to*  
22 *read:*

23 1812.85. (a) Every contract for health studio services shall  
24 provide that performance of the agreed upon services will begin  
25 within six months after the date the contract is entered into. The  
26 consumer may cancel the contract and receive a pro rata refund if  
27 the health studio fails to provide the specific facilities advertised  
28 or offered in writing by the time indicated, ~~which may not be~~  
29 ~~later than six months after the execution of the contract or, if no~~  
30 ~~time is indicated.~~ *If no time is indicated in the contract, the*  
31 *consumer may cancel the contract within six months after the*  
32 *execution of the contract and shall receive a pro rata refund. If a*  
33 *health studio fails to meet a timeline set forth in this section, the*  
34 *consumer may cancel the contract at any time after the*  
35 *expiration of the timeline, provided that if, following the*  
36 *expiration of the timeline, the health studio does provide the*  
37 *advertised or agreed upon services, the consumer may cancel the*  
38 *contract up to 10 days after those services are provided.*

39 (b) (1) Every contract for health studio services shall, in  
40 addition, contain on its face, and in close proximity to the space

reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

“You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent to,

\_\_\_\_\_  
(Name of health studio operator)

at \_\_\_\_\_  
(Address of health studio operator).”

(2) The contract for health studio services shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (A) the name and address of the health studio operator to which the notice of cancellation is to be mailed, and (B) the date the buyer signed the contract.

(3) The contract shall provide a description of the services, facilities, and hours of access to which the consumer is entitled. Any services, facilities, and hours of access that are not described in the contract shall be considered optional services, *and these optional services shall be considered as separate contracts for the purposes of this title and Section 1812.83.*

(4) Until the health studio operator has complied with this section, the buyer may cancel the contract for health studio services.

(5) All moneys paid pursuant to a contract for health studio services shall be refunded within 10 days after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to cancellation.

(c) If at any time during the term of the contract, *including a transfer of the contractual obligation*, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating to the specific location, or in a written offer, and available to the consumer upon execution of the contract, the consumer may cancel the contract

1 and receive a pro rata refund. The consumer may not cancel the  
2 contract pursuant to this subdivision if the health studio, after  
3 giving reasonable notice to its members, temporarily takes  
4 facilities out of operation for reasonable repairs, modifications,  
5 substitutions, or improvements. *This subdivision shall not be*  
6 *interpreted to give the consumer the right to cancel a contract*  
7 *because of changes to the type or quantity of classes or*  
8 *equipment offered, provided the consumer is informed in the*  
9 *contract that the health studio reserves the right to make changes*  
10 *to the type or quantity of classes or equipment offered and the*  
11 *changes to the type or quantity of classes or equipment offered is*  
12 *reasonable under the circumstances.*

13 (d) (1) If a contract for health studio services requires  
14 payment of one thousand five hundred dollars (\$1,500) to two  
15 thousand dollars (\$2,000), inclusive, ~~for the use of the facility by~~  
16 ~~a person~~, including initiation fees or *initial* membership fees, by  
17 *the person receiving the services or the use of the facility*, the  
18 ~~consumer~~ person shall have the right to cancel the contract  
19 within ~~30~~ 20 days after the contract is executed.

20 (2) If a contract for health studio services requires payment of  
21 two thousand one dollars (\$2,001) ~~or more for the use of the~~  
22 ~~facility by a person~~ to two thousand five hundred dollars  
23 (\$2,500), inclusive, including initiation fees or *initial*  
24 membership fees, by *the person receiving the services or the use*  
25 *of the facility*, the ~~consumer~~ person shall have the right to cancel  
26 the contract within ~~60~~ 30 days after the contract is executed.

27 (3) *If a contract for health studio services requires payment of*  
28 *two thousand five hundred and one dollars (\$2501) or more,*  
29 *including initiation fees or initial membership fees, by the person*  
30 *receiving the services or the use of the facility, the person shall*  
31 *have the right to cancel the contract within 45 days after the*  
32 *contract is executed.*

33 (4) The right of cancellation provided in this subdivision shall  
34 be set out in the membership contract.

35 ~~(4)~~  
36 (5) The rights and remedies under this paragraph are  
37 cumulative to any rights and remedies under other law.

38 (6) *A health studio entering into a contract for health studio*  
39 *services that does not require payment in excess of one thousand*  
40 *dollars (\$1000), including initiation or initial membership fees*

1 *and exclusive of interest or finance charges, by the person*  
2 *receiving the services or the use of the facilities, is not required*  
3 *to comply with the provisions of this subdivision that are added*  
4 *by the act adding this paragraph.*

5 (e) Upon cancellation, the consumer shall be liable only for  
6 that portion of the total contract payment, including initiation-and  
7 membership fees and-all other charges however denominated,  
8 that has been available for use by the consumer, based upon a pro  
9 rata calculation over the term of the contract. The remaining  
10 portion of the contract payment shall be returned to the consumer  
11 by the health studio.

12 ~~SEC. 2.~~

13 SEC. 4. Section 1812.86 of the Civil Code is amended to  
14 read:

15 1812.86. (a) No contract for health studio services shall  
16 require payment by the person receiving the services or the use of  
17 the facilities of a total amount in excess of the amount specified  
18 in subdivision (b) or (c).

19 (b) The limit specified in subdivision (a) shall, on and after  
20 January 1, 2006, be three thousand dollars (\$3,000), inclusive of  
21 inflation-or initiation or initial membership fees and exclusive of  
22 interest or finance charges.

23 (c) The limit in subdivision (a) shall, on and after January 1,  
24 2010, be four thousand four hundred dollars (\$4,400), inclusive  
25 of initiation or initial membership fees and exclusive of interest  
26 or finance charges.

27 ~~SEC. 3.~~

28 SEC. 5. Section 1812.96 is added to the Civil Code, to read:

29 1812.96. (a) Except as provided in subdivision (c) or (d), all  
30 money received by the seller of health studio services from a  
31 consumer for a health studio facility that has not yet opened for  
32 business shall be held in trust and shall be deposited in a trust  
33 account established in a state or federally chartered bank or  
34 savings association. The seller shall not draw, transfer, or  
35 encumber any of the money held in trust until five business days  
36 after the health studio facility has opened and the seller has fully  
37 paid refunds to consumers who canceled their contracts as  
38 provided in subdivision (b) or in Section 1812.85.

39 (b) In addition to any other cancellation rights, a consumer  
40 who pays any money under a contract for health studio services

1 for a health studio facility that has not yet opened for business  
2 has the right to cancel the contract and receive a full refund at  
3 any time prior to midnight of the fifth business day after the date  
4 the health studio opens for business. The cancellation right shall  
5 be set forth in the contract. The refund shall be paid within 10  
6 days of receipt of notice of cancellation.

7 (c) Notwithstanding subdivision (a), a seller of health studio  
8 services may draw on money held in trust to pay refunds or may  
9 draw, transfer, or encumber funds to the extent that the amount is  
10 offset by a bond of equal or greater amount that satisfies this  
11 subdivision. The bond shall be issued by a surety insurer  
12 admitted to do business in this state and shall be filed with the  
13 Secretary of State. The bond shall be in favor of the State of  
14 California for the benefit of consumers harmed by a violation of  
15 this title.

16 (d) Subdivision (a) does not apply to a seller of health studio  
17 services that is, at the time money is received from the consumer,  
18 operating at least five health studio facilities in this state that  
19 have been in operation for a period of at least five years, and that  
20 ~~has current tangible assets, based on book value, that exceed~~ *has*  
21 *an excess of current assets over current liabilities by of* at least  
22 one million dollars (\$1,000,000).

23 *SEC. 6. Section 1812.97 is added to the Civil Code, to read:*

24 *1812.97. Nothing in this title is intended to prohibit*  
25 *month-to-month contracts. This section is declaratory of existing*  
26 *law.*